

A New Castle City Board of Adjustment Hearing took place on July 14, 2005 at 7 p.m. in the City of New Castle's Town Hall.

Present: Mayor John F. Klingmeyer
David Athey, City Engineer
Clifford Hearn, City Solicitor
Jeff Bergstrom, Building Official
William Barthel, Applicant

Mayor Klingmeyer called the meeting to order at 7 p.m. This hearing is a continuation (third meeting) regarding 79 West 5th Street. Mr. Hearn stated we have been waiting for information concerning prior precedence on 308 West Chestnut Street involving Mr. Midori's application. He had a copy of the Board of Adjustment's decision (*Exhibit 8*) dated 1/15/99. The City Solicitor at that time was Daniel Wolcott. The Mayor informed that a copy of that decision was given to Mr. Barthel offered it to anyone wishing to review it.

Mr. Hearn -- The property at 4th & Chestnut deals with new construction. They talked about off-street parking and it was a 2-1 decision. They allowed them to do it without off-street parking.

Mr. Athey -- The situation before us this evening is that this applicant has demonstrated that he can comply with the code. He is seeking not to. What we don't know is what hardships were created on the other property (4th & Chestnut) and whether there was degree of effort there was to comply with code. Precedent of some degree has been allowed; there are some similarities. The applicant has made a good case that it would not be injurious to the neighborhood around it. There is no opposition from the neighborhood. One of the neighbors is here supporting it.

Mr. Hearn -- The one difference between Chestnut Street and the earlier one is that one of the neighbor's that if you require the driveway bordering his property and the applicant's property that would cause him a hardship. That doesn't fit within our zoning code. The other difference is that the off-street parking situation on that block is not bad. The only difference is that we had done it in the past and we have a neighbor who has testified that it would be a major detriment to his property if we required a driveway. This is a significant factor.

Mayor -- It is a very small property. He could put a driveway in there but the driveway would then effectively be to eliminate a parking space on the street so there is no net gain. On the Midori (?) property there was no net gain to require off-street parking even though it could have been squeezed on there. (*The Mayor read the decision granting the variance.*)

Mr. Hearn -- The variance applications that I have seen deal with off-street parking in the historic area and the requirement that there be two spots for residential construction and that doesn't fit with New Castle a lot of the time.

Mayor -- It has been the practice where the existing property owner has the right to develop and there is no room for off-street parking, you have to _____ building there even if we cannot enforce that provision. Those properties are grandfathered in. To extend it beyond the grandfathering is something else.

Mr. Hearn -- Looking at the submitted plan it looks like a new structure on one side of the property and another structure in between the other two structures.

(*Referred to map and discussed parking. Mr. Hearn referred to Section 230-57 of the code.*)

Mr. Hearn – This Board is required to follow the code, but also is willing to work for what is best for the community, either way.

Mr. Barthel – If you go back to our original meeting when you mentioned about setting a precedent, then mentioned 10-15 minutes later that a precedent may have been set. Based on what you have read here you can argue it may not be completely in line with what we are trying to do, but the fact is that precedent has been set. You have also said in the last meeting that even though precedent has been set you could still do what you wanted, in so many words. Based on what counsel has indicated about “for the good of the community” and what we are trying to accomplish, I am trying to work with Mr. Richard Evans to put together a compromise and we have put together a decent argument why we shouldn’t have to put in off-street parking. If you couple that with citizenry and what I think if you look at the overall mindset of the community, it is a different circumstance in a different time than what you have with the other property. We can accommodate the code as it states, but you (the Board) have the authority to make that decision.

Mayor – Many of these instances predate our code and as such are grandfathered, they have the right to build even though we have a requirement for off-street parking, which we know they cannot do. That is recognized. In the case of the Midori (?) property, one of the things in giving any variance is it becomes a precedent. In that case there was no logic for providing off-street parking, just eliminate parking in the front. The property was so small there was no big space where you could put it all back there and still have additional parking in front. They are very limited. I have been on the Board for over 30 years and we follow the rules pretty sternly. To say that that example elsewhere is precedent for this I don’t see where that applies. You have a large lot. It’s just a matter of whether it will inconvenience your neighbor. The hardship is not there. You can make adjustments, it is just a matter of how many buildings you want to put there. You do not meet three of the four requirements.

Mr. Richard Evans – I don’t believe this is setting a precedent that is usable by someone else.

Mr. Hearn – We have to meet the four requirements that are set forth.

Mr. Athey – The zoning code has all sorts of regulations. My concern is someone could come back later who can conform to the code, but they choose not to. This is essentially what is going on. You can conform to the city code, you just don’t want to. To me that opens a door.

Mr. Richard Evans – What was the change in the plan?

Mr. Athey – The initial plan showed 9 feet between Lot #2 and your house. My comment was whether 9 feet would work. I didn’t feel that was adequate.

Mr. Richard Evans – If 9 feet would back him into my property wouldn’t 11 feet back into it more?

Mr. Athey – It gives you an extra foot on either side. This is still pushing it too.

Mr. Ennio D’Alessandro, 38 West 7th Street – I am concerned about this case. In about three weeks there is a similar case where 50-60 neighbors don’t want parking in the rear or the front. Council can recommend to the Board to allow the variance so they park cars on the street. I realize it is a different case, different situation, but it means a lot to citizens of the city. Council suggested they come back to the Board for a variance so they can park cars on the street. If this is denied, there could be a problem with the next variance.

Mayor – They did propose an alternative where there would be off-street parking in the rear.

Mr. Athey – If this is a negative vote tonight there seems to be enough public support to not having off-street parking. I wonder whether there is enough support to change the law.

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Mr. Bergstrom – The zoning ordinance permits off-street parking on properties that are within a walkable distance.

(Lengthy discussion about off-street parking and easements took place.)

Mr. Hearn – We are trying to find a solution with a very difficult ordinance.

Mr. Athey moved that the Board grant the variance for providing off-street parking for the existing dwelling on what will become Lot #1. Mr. Hearn seconded the motion. The motion passed unanimously.

Mr. Athey moved that the Board deny the application for waiver of parking requirements on Lot #2. Mr. Hearn cited the reasons for denial as follows: 1) it does not meet the special conditions and circumstances with this particular land structure or buildings involved in which are not applicable to other land structures or buildings, 2) it would deprive the applicant the rights commonly enjoyed by other properties in the same district and, 3) special conditions and circumstances are not the result of the actions of the applicant. The motion was seconded and passed unanimously.

The hearing was adjourned.

Exhibit:

#8 – Board of Adjustment Decision dated 1/15/99

(These minutes were transcribed from tape.)